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VAN WAGNER COMMUNICATIONS, LLC

12 UNITED STATES DISTRICT COURT
13
14 CENTRAL DISTRICT OF CALIFORNIA

15 VAN WAGNER
16 COMMUNICATIONS, LLC,

17 Plaintiff,

18 vs.

19 CITY OF LOS ANGELES,

20 Defendant.
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CASE NO. CV 08-05782 DSF (JTLx)

**NOTICE OF MOTION AND
MOTION TO ENFORCE
STIPULATION AND OCTOBER 21,
2008 STAY ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

[Declarations of Peter Rauli and Aimee
Feinberg filed concurrently herewith]

Date: December 8, 2008
Time: 1:30 p.m.
Judge: Hon. Dale S. Fischer

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE that at 1:30 p.m. on Monday, December 8, 2008,
3 or as soon thereafter as counsel may be heard, in the courtroom of the Honorable
4 Dale S. Fischer (Courtroom 840) in the United States District Court for the Central
5 District of California, Western Division, Roybal Federal Building, 255 East Temple
6 Street, Los Angeles, California, Plaintiff will, and hereby does, move for an order
7 enforcing the confidentiality provision set forth in the parties' stipulation and
8 embodied in this Court's October 21, 2008 order staying the litigation in the above-
9 captioned matter.

10 Plaintiff's motion is based on this Notice of Motion and Motion, the
11 accompanying Memorandum of Points and Authorities, the concurrently filed
12 declarations of Peter Raulli and Aimee Feinberg, all pleadings and papers on file in
13 this action, the arguments of counsel, and any other argument or evidence properly
14 before this Court. This motion is made following the conference of counsel
15 pursuant to L.R. 7-3. Counsel conferred regarding this motion on more than one
16 occasion, including on November 3, 2008. The parties have agreed to waive the
17 20-day advance notice requirement in L.R. 7-3 because of the time constraints set
18 forth in the California Public Records Act, which require the City to provide a
19 response to the pending request for records within ten days. *See* Cal. Gov't Code
20 § 6253(c).

21 DATED: November 7, 2008

MUNGER, TOLLES & OLSON LLP

23 By: 
24 AIMEE FEINBERG

25 Attorneys for Plaintiff
26 VAN WAGNER COMMUNICATIONS,
27 LLC
28

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MEMORANDUM OF POINTS AND AUTHORITIES

Through this motion, Van Wagner Communications, LLC (“Van Wagner”) respectfully requests that the Court enter an order enforcing the confidentiality provision of the parties’ stipulated agreement embodied in this Court’s October 21, 2008 order staying the above-captioned litigation. That provision prohibits the City from disclosing a confidential and proprietary list of property locations provided by Van Wagner to the City as part of the parties’ stipulated stay unless “otherwise required by law.” Counsel for one of Van Wagner’s competitors has requested that the City produce Van Wagner’s list under the California Public Records Act. Because the parties’ stipulation prohibits such disclosure, and this Court’s October 21 order incorporates this term of the parties’ stipulation, and because no provision of law requires release of the information, Van Wagner respectfully seeks an order enforcing the confidentiality requirement set forth in the parties’ stipulation and incorporated in the Court’s order.

I. BACKGROUND

Van Wagner is an outdoor advertising company that does business in Los Angeles and in metropolitan areas throughout the country. On September 4, 2008, Van Wagner filed suit against the City of Los Angeles (the “City”), alleging that the City’s sign ordinance, which generally prohibits the erection of all new off-site signs, violates the First Amendment to the United States Constitution. In particular, Van Wagner’s complaint alleged that the City’s sign ordinance vests unfettered discretion in City officials to decide which signs to allow and impermissibly regulates commercial speech.

On October 16, 2008, after good faith negotiations, the City and Van Wagner stipulated to a stay of their dispute. Their stipulation noted that a court in this district, in the matter *World Wide Rush, LLC v. City of Los Angeles*, No. 07-238 (C.D. Cal.) (Collins, J.), had already concluded that certain provisions of the City’s sign ordinance violated the First Amendment and had issued a permanent

1 injunction barring the City from enforcing those unlawful provisions against World
2 Wide Rush. *See* Stipulation of Parties to Stay Case, Oct. 16, 2008 (Dkt. 15), at 3
3 (“Stipulation”). The Stipulation further stated that Van Wagner’s complaint against
4 the City raised many of the same constitutional issues presented in *World Wide*
5 *Rush* and that the outcome of the City’s appeal of the *World Wide Rush* decision to
6 the Ninth Circuit could impact the instant litigation. *Id.* In light of the pendency of
7 the *World Wide Rush* appeal, the City and Van Wagner agreed to stay the litigation
8 between them “to avoid the waste of judicial resources associated with continued
9 litigation and the risk of inconsistent rulings pending a final decision by the Ninth
10 Circuit in *World Wide Rush*.” *Id.* at 3-4. The parties stipulated that their negotiated
11 stay would remain in effect pending the Ninth Circuit’s decision in *World Wide*
12 *Rush*, but agreed that Van Wagner would be entitled, in its sole and absolute
13 discretion, to recommence active litigation at any time. *Id.* ¶¶ 1-2. During the stay
14 period, the City is prohibited from enforcing against Van Wagner the provisions of
15 its sign ordinance that the *World Wide Rush* court had found to be unconstitutional.
16 *Id.* ¶ 3.

17 The Stipulation also required Van Wagner to provide the City with a list of
18 locations to which the stay of enforcement would apply, subject to the City’s
19 agreement to maintain that list in confidence. Paragraph 5(a) of the Stipulation
20 states:

21 Plaintiff Van Wagner agrees that . . . [i]t shall, on the day
22 this stipulation is signed by both parties, provide to
23 defendant City a list of locations to which this stipulation
24 and stay shall apply. Defendant City understands and
25 agrees that this list and the information contained therein
26 shall be treated as confidential and proprietary
27 information and that it shall not be shared with anyone,
28 including any of Van Wagner’s competitors or those with
whom such competitors contract, except as otherwise
required by law. Defendant City agrees that should it
receive any request for disclosure, it shall immediately
notify plaintiff Van Wagner so that plaintiff may assert
any legal claim for non-disclosure.

1 *Id.* ¶ 5(a).

2 As set forth in the Stipulation, Van Wagner provided its list of locations to
 3 the City on the same day that the Stipulation was signed and filed. *See* Declaration
 4 of Peter Raulli (“Raulli Decl.”) ¶¶ 2, 12. The list expressly states that it is part of
 5 the parties’ stipulated stay and is subject to the parties’ confidentiality agreement.
 6 *Id.* ¶ 12 (noting that the list says it is “[s]ubject to the Stipulation of the Parties to
 7 Stay Case (Case No. CV-08-05782 DSF (JTLx))” and includes information that “is
 8 confidential, proprietary and non-public information of Van Wagner
 9 Communications, LLC”).

10 On October 21, 2008, pursuant to the parties’ Stipulation, this Court entered
 11 an order staying the litigation. *See* Order Staying Case, No. 08-5782 DSF (Oct. 21,
 12 2008) (Dkt. 16) (“Stay Order”). That order incorporated the parties’ stipulated
 13 agreement, including paragraph 5(a)’s confidentiality provision. *See id.*

14 On October 28, 2008, counsel for World Wide Rush, one of Van Wagner’s
 15 competitors, sent a letter to the City requesting that the City produce Van Wagner’s
 16 list of locations under the California Public Records Act. *See* Declaration of Aimee
 17 Feinberg at Exs. A & B.¹ As provided in the Stipulation and Stay Order, the City
 18 notified Van Wagner of World Wide Rush’s request. Van Wagner informed the
 19 City of its objection to disclosure of the list and subsequently filed this motion to
 20 enforce the City’s confidentiality obligation.

21 **II. ARGUMENT**

22 **A. The Stipulation Prohibits the City from Releasing the List**

23 The City may not disclose Van Wagner’s list under the express terms of the
 24 Stipulation, which was subsequently incorporated into the Court’s Stay Order. As
 25

26 ¹ World Wide Rush’s counsel’s letter expresses the incorrect view that the Stipulation requires
 27 Van Wagner’s list of locations to include only sites for which Van Wagner has an executed lease
 28 with the property owner. The Stipulation contains no such limitation. *See* Stipulation ¶ 5(a)
 (requiring Van Wagner to provide “a list of locations to which this stipulation and stay shall
 apply”).

1 noted above, the Stipulation provides that the “City understands and agrees that
 2 [Van Wagner’s] list and the information contained therein shall be treated as
 3 confidential and proprietary information and *that it shall not be shared with*
 4 *anyone*, including any of Van Wagner’s competitors or those with whom such
 5 competitors contract, except as otherwise required by law.” Stipulation ¶ 5(a)
 6 (emphasis added); Stay Order ¶ 5(a) (incorporating terms of the Stipulation)
 7 (emphasis added). Accordingly, the Court should enter an order enforcing the
 8 City’s confidentiality obligation and prohibiting the City from disclosing Van
 9 Wagner’s list to World Wide Rush, its counsel, or anyone else.

10 **B. The California Public Records Act Does Not Require the City to**
 11 **Disclose Van Wagner’s List to One of Its Competitors**

12 As noted, World Wide Rush requested production of Van Wagner’s list under
 13 the California Public Records Act (“CPRA”), California Government Code
 14 sections 6250 *et seq.* That statute does not require the City to turn over Van
 15 Wagner’s confidential and proprietary information to one of its competitors.
 16 Therefore, in the words of the Stipulation and Stay Order, the City is not “otherwise
 17 required by law” to disclose Van Wagner’s list.

18 The CPRA requires state and local agencies to make records available to the
 19 public, subject to a number of enumerated exceptions that protect records from
 20 disclosure. Cal. Gov’t Code § 6253 (setting forth disclosure requirements), *id.*
 21 § 6254 (“nothing in this chapter shall be construed to require disclosure of records
 22 that are any of the following . . .”). Even assuming that Van Wagner’s list is a
 23 “public record” within the meaning of the CPRA, *id.* § 6252(e) (defining “[p]ublic
 24 records”), it is protected from disclosure under at least three exemptions in the Act,
 25 each of which is independently sufficient to preclude the City from releasing the
 26 list.

27 1. The CPRA exempts from disclosure “[r]ecords pertaining to
 28 pending litigation to which the public agency is a party . . . until the pending

litigation or claim has been finally adjudicated or otherwise settled.” *Id.* § 6254(b). This provision applies to documents that are “specifically prepared for use in litigation” while litigation is ongoing. *Fairley v. Super. Ct.*, 66 Cal. App. 4th 1414, 1420, 78 Cal. Rptr. 2d 648 (1998) (internal quotation marks omitted). Section 6254(b) applies not only to records created by the public agency itself, but also to any “litigation-related documents, when sought by persons or entities not party to the litigation, which the parties to the litigation do not intend to be revealed outside the litigation.” *Bd. of Trustees of the Cal. State Univ. v. Super. Ct.*, 132 Cal. App. 4th 889, 894, 34 Cal. Rptr. 3d 82 (2005). In *Board of Trustees*, the Court of Appeal held that correspondence from opposing counsel was not subject to disclosure under the CPRA because it was a record pertaining to pending litigation. “Although prepared by an opposing attorney or party, such correspondence in the possession of the public entity should be protected if the parties did not intend that the documents be revealed outside the litigation [Such documents] would . . . be subject to section 6254(b) as records ‘pertaining to pending litigation,’ and protected from disclosure to the same extent as documents prepared by the public entity.” *Id.* at 900.

Board of Trustees is squarely on point. To begin with, Van Wagner’s list is a litigation-related document. As explained above, it was prepared specifically for use in this litigation—it was prepared and sent to the City as part of the parties’ stipulation to stay the litigation. *See* Stipulation ¶ 5(a); Stay Order ¶ 5(a); *see also* Raulli Decl. ¶¶ 2, 12 (noting that the list “was provided to the City . . . as part of the parties’ joint stipulation” and bears a header stating “[s]ubject to the Stipulation of the Parties to Stay Case (Case No. CV-08-05782 DSF (JTLx))”). In addition, neither the City nor Van Wagner “intend[s] [for the list] to be revealed outside the litigation.” *See Bd. of Trustees*, 132 Cal. App. 4th at 894. To the contrary, the parties jointly agreed that the list would be treated as confidential. *See* Stipulation ¶ 5(a); *see also* Raulli Decl. ¶¶ 11-12 (noting that “it was understood and agreed

1 between the parties that the list would remain confidential” and that the list itself
2 states that “[t]he information included in this document is confidential, proprietary
3 and non-public information of Van Wagner Communications, LLC”). Finally,
4 there is no doubt that the instant litigation remains pending. *See* Cal. Gov’t Code
5 § 6254(b) (applying exemption “until the pending litigation or claim has been
6 finally adjudicated or otherwise settled”); *Bd. of Trustees*, 132 Cal. App. 4th at 899.
7 This litigation is merely stayed pending resolution of the *World Wide Rush* appeal,
8 and under the Stipulation and Stay Order, Van Wagner is entitled to recommence
9 active litigation at any time. Stipulation ¶ 2. For these reasons, the list of locations
10 provided by Van Wagner is covered by the pending litigation exception in
11 section 6254(b) and is exempt from disclosure under the CPRA.

12 2. The CPRA also exempts from disclosure “[r]ecords, the
13 disclosure of which is exempted or prohibited pursuant to federal or state law,
14 including, but not limited to, provisions of the Evidence Code relating to privilege.”
15 Cal. Gov’t Code § 6254(k). The Evidence Code, in turn, provides a privilege for
16 trade secret information, stating, in relevant part: “[i]f he or his agent or employee
17 claims the privilege, the owner of a trade secret has a privilege to refuse to disclose
18 the secret, and to prevent another from disclosing it, if the allowance of the
19 privilege will not tend to conceal fraud or otherwise work injustice.” Cal. Evid.
20 Code § 1060. Van Wagner’s list contains trade secret information and thus is
21 exempt from disclosure.

22 A trade secret “means information, including a formula, pattern, compilation,
23 program, device, method, technique, or process, that . . . (1) [d]erives independent
24 economic value, actual or potential, from not being generally known to the public
25 or to other persons who can obtain economic value from its disclosure or use; and
26 (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain
27 its secrecy.” Cal. Civ. Code § 3426.1(d). As explained in the accompanying
28 declaration, Van Wagner invested significant time and resources to compile the list

1 of property locations, including undertaking efforts to identify locations, develop
2 business relationships, and establish goodwill with property owners. *See* Raulli
3 Decl. ¶ 3. Courts regularly treat compilations of business information of this kind
4 as protected trade secrets. *See Courtesy Temp. Serv., Inc. v. Camacho*, 222 Cal.
5 App. 3d 1278, 1287, 272 Cal. Rptr. 352 (1990) (holding that plaintiff's customer
6 list developed through significant efforts was a trade secret and that plaintiff's
7 "work effort[] or process of acquiring and retaining clientele . . . constitutes a
8 protectable trade secret"); *Morlife, Inc. v. Perry*, 56 Cal. App. 4th 1514, 1521-22,
9 66 Cal. Rptr. 2d 731 (1997) (similar); *San Jose Constr., Inc. v. S.B.C.C., Inc.*, 155
10 Cal. App. 4th 1528, 1539-40, 67 Cal. Rptr. 3d 54 (2007) (similar).

11 Van Wagner's list of locations also derives independent economic value from
12 "not being generally known to the public or to other persons who can obtain
13 economic value from its disclosure or use." Cal. Civ. Code § 3426.1(d)(1); *see also*
14 *Morlife*, 56 Cal. App. 4th at 1522 ("The requirement that a customer list must have
15 economic value to qualify as a trade secret has been interpreted to mean that the
16 secrecy of this information provides a business with a 'substantial business
17 advantage.'" (citing *Klamath-Orleans Lumber, Inc. v. Miller*, 87 Cal. App. 3d 458,
18 465 (1978))). If the City were to reveal Van Wagner's list, Van Wagner's
19 competitors would learn the location of sites where Van Wagner is negotiating
20 leases and could seek to undercut Van Wagner in those negotiations. *See* Raulli
21 Decl. ¶¶ 8-10 (discussing competitive harm to Van Wagner were the City to
22 disclose the list).

23 Finally, Van Wagner has undertaken "efforts that are reasonable under the
24 circumstances to maintain [the] secrecy" of its list. Cal. Civ. Code § 3426.1(d)(2).
25 Only employees who are working on projects relating to potential sign locations
26 will generally be aware of those locations. *See id.* ¶ 7. Van Wagner's practice is to
27 not disclose its confidential and proprietary information outside the company. *Id.* ¶
28 5. For example, Van Wagner does not disclose to its advertisers locations where it

1 is still negotiating a lease. *Id.* ¶ 6. In addition, when speaking with potential
 2 lessors, Van Wagner’s general practice is to provide only a copy of the Court’s
 3 October 21, 2008 stay order and not Van Wagner’s list of locations. *Id.* When a
 4 potential lessor requests a copy of the list, Van Wagner provides only a version of
 5 the list that is redacted to omit all location addresses except that of the potential
 6 lessor. *Id.* Finally, Van Wagner provided the list to the City only as part of the
 7 parties’ joint stipulation, which requires the City to maintain the information in
 8 confidence, and clearly marked the list “confidential, proprietary and non-public.”
 9 *See id.* ¶¶ 11-12; Stipulation ¶ 5(a). These measures reflect significant, and
 10 certainly reasonable, efforts under the circumstances to maintain the secrecy of the
 11 information contained in Van Wagner’s list. *See, e.g., Morlife*, 56 Cal. App. 4th at
 12 1522 (stating that “labeling information ‘trade secret’ or ‘confidential information’
 13 [is] . . . an important factor in establishing the value which was placed on the
 14 information . . .”).

15 3. Finally, Van Wagner’s list is exempt from disclosure under the
 16 CPRA’s “catch-all” exemption, California Government Code section 6255, which
 17 provides that an agency need not disclose a public record when, “on the facts of the
 18 particular case the public interest served by not disclosing the record clearly
 19 outweighs the public interest served by disclosure of the record.” Cal. Gov’t Code
 20 § 6255(a); *see also Times Mirror Co. v. Super. Ct. of Sacramento County*, 53 Cal.
 21 3d 1325, 1337-39, 283 Cal. Rptr. 893 (1991) (discussing section 6255). Here, there
 22 is a strong public interest in enforcing the terms of an agreement that resulted in a
 23 stay of potentially burdensome litigation against the City. There is no significant
 24 countervailing public interest in disclosing a confidential list of Van Wagner’s
 25 proprietary information.

26 **III. CONCLUSION**

27 The parties’ Stipulation, the terms of which were subsequently incorporated
 28 into this Court’s Stay Order, prohibits the City from disclosing the information

1 contained in Van Wagner's list "except as otherwise required by law." The law
2 does not require such disclosure. Accordingly, the Court should enter an order
3 enforcing the confidentiality provision set forth in the parties' Stipulation and
4 incorporated into the Court's October 21, 2008 Stay Order.

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6 DATED: November 7, 2008

MUNGER, TOLLES & OLSON LLP

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